

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DELORIS A. GIBSON,

Case No. 2:16-01885-GMN-PAL

Plaintiff,

v.

SCREENING ORDER

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

(IFP App – ECF No. 1)

Defendant.

Plaintiff Deloris A. Gibson has submitted an Application to Proceed *In Forma Pauperis* (ECF No. 1) pursuant to 28 U.S.C. § 1915 along with a Complaint (ECF No. 1-2). This Application and Complaint are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice.

I. IN FORMA PAUPERIS APPLICATION

Ms. Gibson's Application includes the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted. The court will now review the Complaint.

II. SCREENING THE COMPLAINT

After granting a request to proceed *in forma pauperis*, a federal court must additionally screen the complaint and any amended complaints filed prior to a responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (§ 1915(e) "applies to all *in forma pauperis* complaints"). The simplified pleading standard set forth in Rule 8(a) of the Federal Rules of Civil Procedure applies to all civil actions, with limited exceptions. *Alvarez v. Hill*, 518 F.3d 1152, 1159 (9th Cir. 2008). For purposes of 28 U.S.C. § 1915's screening requirement, a properly pled complaint must therefore provide "a short and plain statement of the claim

1 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see also Bell Atlantic*
2 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
3 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
4 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A
5 complaint “must contain sufficient allegations of underlying facts to give fair notice and to
6 enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th
7 Cir. 2011).

8 Federal courts are given the authority dismiss a case if the action is legally “frivolous or
9 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from
10 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). The standard for
11 determining whether a plaintiff has failed to state a claim upon which relief can be granted under
12 § 1915 is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a
13 claim. *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Review under Rule 12(b)(6) is
14 essentially a ruling on a question of law. *North Star Intern. v. Ariz. Corp. Comm’n*, 720 F.2d
15 578, 580 (9th Cir. 1983). In considering whether a plaintiff states a valid claim, the court accepts
16 as true all material allegations in the complaint and construes them in the light most favorable to
17 the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). When a court dismisses
18 a complaint pursuant to § 1915(e), a plaintiff is ordinarily given leave to amend with directions
19 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies
20 could not be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

21 Here, Ms. Gibson’s Complaint challenges a decision by the Social Security
22 Administration (“SSA”) denying her disability insurance benefits and supplemental security
23 income under Titles II and XVI of the Social Security Act. *See* Compl. (ECF No. 1-2) ¶ 1. To
24 state a valid benefits claim, a complaint must give the defendant fair notice of what the plaintiff’s
25 claim is and the grounds upon which it rests. *Starr*, 652 F.3d at 1216. To do so, a complaint
26 should state when and how a plaintiff exhausted her administrative remedies with the SSA and
27 the nature of her disability, including when she claims she became disabled. The complaint
28 should also contain a short and concise statement identifying the nature of the plaintiff’s

1 disagreement with the SSA's determination and show that the plaintiff is entitled to relief.
2 Although this showing need not be made in great detail, it must be presented in sufficient detail
3 for the court to understand the disputed issues so that it can meaningfully screen the complaint.
4 *See* 4 Soc. Sec. Law & Prac. § 56:4 (2015).

5 **A. Exhaustion of Administrative Remedies**

6 Before a plaintiff can sue the SSA in federal court, she must exhaust her administrative
7 remedies. 42 U.S.C. § 405(g); *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989)
8 ("Section 405(g) provides that a civil action may be brought only after (1) the claimant has been
9 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the
10 claim"). Generally, if the SSA denies a claimant's application for disability benefits, she can
11 request reconsideration of the decision. If the claim is denied upon reconsideration, a claimant
12 may request a hearing before an Administrative Law Judge ("ALJ"). If the ALJ denies the
13 claim, a claimant may request review of the decision by the Appeals Council. If the Appeals
14 Council declines to review the ALJ's decision, a claimant may then request review by the United
15 States District Court. *See* 20 C.F.R. §§ 404.981, 416.1481. A civil action for judicial review
16 must be commenced within 60 days after receipt of the Appeals Council's notice of a final
17 decision. *Id.* *See also* 20 C.F.R. § 405.501. The SSA assumes that the notice of final decision
18 will be received within five days of the date on the notice unless shown otherwise; thus, an
19 action commenced within 65 days is presumed timely. The civil action must be filed in the
20 judicial district in which the plaintiff resides. 42 U.S.C. § 405 (g).

21 In this case, Ms. Gibson alleges that on June 6, 2016, the Appeals Council denied the
22 request for review and the ALJ's decision became the final decision of the Commissioner. *See*
23 Compl. ¶ 8. Thus, it appears she has exhausted her administrative remedies. Ms. Gibson timely
24 commenced this action as the Complaint was filed on August 10, 2016, and the Complaint
25 indicates that she resides within the District of Nevada. *See* Compl. ¶ 1. Accordingly, Ms.
26 Gibson has satisfied these prerequisites for judicial review.

B. Grounds for Ms. Gibson's Appeal and the Nature of the Disability

The Complaint seeks judicial review of the Commissioner's decision denying benefits and asks the Court to reverse that decision, or alternatively, to remand this matter for a new hearing. A district court can affirm, modify, reverse, or remand a decision if a plaintiff has exhausted his or her administrative remedies and timely filed a civil action. However, judicial review of the Commissioner's decision to deny benefits is limited to determining: (a) whether there is substantial evidence in the record as a whole to support the findings of the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Comm'r Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

In her Complaint, Ms. Gibson states that she is disabled based on her history of "ischemic heart disease, and degenerative disc disease." *See* Compl. (ECF No. 1-2) ¶ 7. As a result of these medically determinable impairments, she alleges she became disabled on December 1, 2008. *Id.* Ms. Gibson contends that the Commissioner's findings of fact and conclusions are "not supported by substantial evidence" in the record and "contrary to law and regulation." *Id.* ¶ 8. The ALJ allegedly "failed to comply with the regulations in weighing the opinion evidence in this case, evaluating credibility, and supporting the finding of non-disability with substantial evidence." *Id.*

Ms. Gibson's Complaint merely alleges that the Commissioner's decision to deny her benefits was wrong, but she fails to indicate *why* the decision was wrong other than by reciting the general standards that govern the court's review of the SSA's decision. Rule 8's pleading standard requires more than a "formulaic recitation of the elements of a cause of action" and more than "labels and conclusions." *Iqbal*, 556 U.S. at 678. A complaint merely stating that the SSA's decision was wrong and failing to describe the underlying reasons why the decision was erroneous is insufficient to satisfy Rule 8's pleading requirement because the complaint does not provide "fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Cf. Starr*, 652 F.3d at 1216 (addressing post-*Iqbal* pleading standards and holding that a complaint "must contain sufficient allegations of underlying facts to give fair notice and to enable the

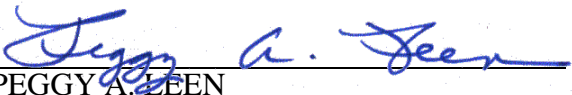
opposing party to defend itself effectively"). Accordingly, the Complaint fails to state a claim upon which relief can be granted.

Based on the foregoing,

IT IS ORDERED:

1. Plaintiff Deloris A. Gibson's Application to Proceed *In Forma Pauperis* (ECF No. 1) is **GRANTED**. Ms. Gibson shall not be required to pay the filing fee of four hundred dollars (\$400.00).
2. Ms. Gibson is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of a security therefor. This Order granting leave to proceed in forma pauperis shall not extend to the issuance and/or service of subpoenas at government expense.
3. The Clerk of Court shall FILE the Complaint, but SHALL NOT issue summons.
4. The Complaint is **DISMISSED WITH LEAVE TO AMEND**. Ms. Gibson shall have until **September 16, 2016**, to file an amended complaint, if she believes she can correct the noted deficiencies.
5. Failure to file an amended complaint in accordance with this order may result in a recommendation to the district judge that this case be closed.

Dated this 1st day of September, 2016.


PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE